IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 8785 of 2001

(Cr.No.850/01 of City Traffic Police Station, Kochi City)

PETITIONER/ACCUSED

NANDAKUMAR
S/O KUNJURAMAN
B.T.S.AVENUE
BTS ROAD, EDAPPALLY

BY ADV. SRI.S.RAJEEV

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
(Cr.No.850/2001 of City Traffic
Police Station, Kochi City)

BY Sr. PUBLIC PROSECUTOR SRI.MUHAMMED PUZHAKKARA.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 8785 of 2001

ORDER ON CRL.M.P.NOS.6598 OF 2001 & 7650 OF 2002
IN
CRL.M.C.NO.8787 OF 2001

Dismissed

Sd/-
A.K.BASHEER, JUDGE

3.12.07

A.K.BASHEER, J.

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Crl.M.C.No.8785 OF 2001

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Dated this the 3rd day of December 2007

ORDER

Petitioner who is being prosecuted before the Judicial Magistrate of First Class II, Aluva for offences punishable under Sections 184, 185 and Section 3(1) readwith Section 181 of Motor Vehicles Act, 1988 has preferred this petition under Section 482 of the Code of Criminal Procedure seeking to quash the above proceedings pending against him.

2. The prosecution case against the petitioner as could be seen from Annexure-I charge sheet is that he had been found driving scooter bearing Reg.No.KL7/Q-1292 on Aluva-Edappally road at about 8.30 p.m. on April 7, 2001 after consuming alcohol and without proper authority to drive. There is a further allegation that the petitioner was found driving the vehicle in such a way as to cause accident by overtaking other vehicles in a rash manner.

3. While inviting my attention to Annexure-II certificate of drunkenness issued by the Assistant Surgeon attached to

the General Hospital, Ernakulam, it is submitted by the learned counsel that the Doctor had only noted the presence of smell of alcohol when the petitioner was examined. More importantly, the doctor had categorically certified that the petitioner was not under the influence of alcohol, though he was of the opinion that the petitioner had consumed alcohol. There is nothing on record to indicate that petitioner was subjected to a Breath analyser test as prescribed in Section 185 of the Act.

4. The prosecution had not produced any certificate to show that alcohol exceeding 30 ml.gm. per 100 ml of blood was detected in any test conducted on the petitioner. It is contended by the learned counsel that petitioner was charge sheeted by the police only because of the vindictive attitude of the officer who was on duty on the particular day. Though it is indicated that petitioner did not hold a driving license, he has produced it as annexure III before this court. The alleged accident had taken place way back in April 2001. This

petition has been pending before this court since December 2001.

5. In the absence of any material to show that the petitioner was under the influence of alcohol at the time when he was allegedly found driving the vehicle, I do not see any reason to allow the above proceedings against him to continue.

The proceedings against the petitioner in S.T.No. 1498/01 on the file of Judicial Magistrate of First Class-II, Aluva are quashed. The Crl.M.C. is allowed.

(A.K.BASHEER, JUDGE)

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